

APPEAL NO. 040552  
FILED APRIL 21, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 19, 2004. The hearing officer determined that the determination of the Independent Review Organization (IRO) against spinal surgery was not supported by a preponderance of the evidence and should not be upheld. The appellant (carrier) appealed, arguing that the hearing officer did not accord the IRO's opinion the presumptive weight to which it was entitled. The respondent (claimant) responds that the decision of the hearing officer not to uphold the determination of the IRO is sufficiently supported by the evidence.

DECISION

Affirmed.

The carrier asserts that the hearing officer's decision is against the great weight and preponderance of the evidence, asserting that the decision of the IRO carries presumptive weight. We have previously addressed the "presumptive weight" provision of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 133.308(v) (Rule 133.308(v)), and determined that it is an evidentiary rule which creates a rebuttable presumption, as distinguished from a conclusive presumptive, that the IRO decision is the correct decision which should be adopted by the hearing officer and the Appeals Panel unless rebutted by contrary evidence. See Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002. In the instant case, the hearing officer found the opinion of the treating doctor that the claimant needed spinal surgery was sufficient to overcome the presumptive weight afforded to the IRO. Nothing in our review of the record indicates that the hearing officer's decision requires reversal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **SENTRY INSURANCE, A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

**TREVA DURHAM  
1000 HERITAGE CIRCLE DRIVE  
ROUND ROCK, TEXAS 78664-4463.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge